Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	))) CC Docket No. 97-21))

AT&T REPLY COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, and the Commission's Notice herein,[1] AT&T Corp. ("AT&T") replies to the comments of other parties on the Commission's proposed changes in the composition of the board of directors of the National Exchange Carriers Association, Inc. ("NECA").[2]

1 Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket No. 97-21, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 97-11, released January 10, 1997 ("Notice").

2 In addition to AT&T, comments were filed by the American Library Association ("ALA"); the Ameritech Operating Companies ("Ameritech"); the Bell Atlantic Telephone Companies jointly with the NYNEX Telephone Companies ("Bell Atlantic/NYNEX"); the Rural Telephone Coalition jointly with the United States Telephone Association ("LEC Associations"); MCI Telecommunications Corporation ("MCI"); the National Cable Television Association, Inc. ("NCTA"); NECA; Pacific Telesis Group ("PacTel"); the Personal Communications Industry Association ("PCIA"); Southwestern Bell Telephone Company ("Southwestern Bell"); Sprint Corporation ("Sprint"); U S WEST, Inc. ("U S WEST"); and WorldCom.

Like AT&T, the overwhelming majority of commenters -- including, significantly, even incumbent local exchange carriers ("ILECs") -- recognize that NECA's October 18, 1996 proposal to add a token complement of non-ILEC directors to its board would be totally inadequate to convert NECA into a neutral, unbiased entity suitable to act as the administrator of the new universal service fund ("NUSF"). Moreover, there is virtually unanimous agreement among the commenters that fundamental changes in NECA's governance and corporate structure, such as NECA's January 10, 1997 proposal to establish (and later spin off) a non-controlled subsidiary, are required to assure "significant, meaningful representation" for non-ILEC interests that could qualify NECA or its successor as a potential NUSF administrator.

AT&T showed in its Comments (pp. 3-6) that NECA's proposal to add three directors representing non-ILEC carriers to its current board is plainly insufficient to provide a meaningful role for such carriers in NECA's corporate governance, because the board would continue to be dominated by directors representing (or elected by) ILECs. Most other commenters join in this assessment. WorldCom, for example, states (p. 5) it is "painfully obvious" that NECA's proposal "completely fails" the criteria for a neutral NUSF administrator established by the Federal-

State Joint Board in CC Docket No. 96-45.[3] As WorldCom also observes (p. 6), NECA's proposal "can[not] hope to render that organization hospitable to any interests except those of the ILECs." The same conclusion is expressed by other interexchange carriers ("IXCs")[4], competitive access providers ("CAPs"),[5] and wireless service providers.[6]

Even more important, no ILEC commenter attempts seriously -- or indeed, in some cases, at all -- to support or defend NECA's October 18 proposal.[7] As the

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3 See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, FCC 96J-3, released November 8, 1996, ¶ 830.

4 See MCI, p. 3 (under NECA's proposal "the [b]oard would be strongly skewed in favor of entities who would receive universal service funds, while the interests of the 'universal service payors' would be grossly under-represented"); see also Sprint, p. 2.

5 NCTA, p. 6 (NECA's October 16 proposal "cannot be said to add 'significant meaningful representation' for non-ILEC directors").

6 PCIA, p. 2 (NECA's proposal "would amount only to a token representation on the NECA [b]oard . . . which would continue to be controlled by incumbent LEC representatives").

7 See PacTel, p. 2 (avoiding discussion of October 18 proposal as "not relevant"); U S WEST, p. 2 (focusing instead on NECA January 10 proposal). Bell Atlantic/NYNEX baldly assert (p. 2) that NECA's October 16 proposal would satisfy the Joint Board's criteria, despite the fact NYNEX has previously admitted that "major representation" for non-ILEC interests is required for competitive neutrality. See also Southwestern Bell, p. 2 (asserting without support that NECA's proposal "clearly satisfies" the Joint Board's criteria).

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LEC Associations are constrained to admit (p. 5), NECA's proposal "would create substantial legal and operational difficulties." Indeed, NECA itself now concedes (p. 5) that its October 16 proposal was insufficient to satisfy the neutrality concerns articulated in CC Docket 96-45. In sum, the record is clear that the token board representation for non-ILECs previously proposed by NECA is inadequate to satisfy the Joint Board's standards for an impartial NUSF administrator.

There is likewise substantial agreement that achieving true neutrality will require fundamental changes in NECA's corporate structure, as AT&T's Comments (pp. 5-7) showed. In particular, many of the commenters note that on January 10, 1997 NECA submitted to the Commission a new proposal to establish a wholly-owned subsidiary solely to perform NUSF functions in the event NECA is selected as an interim administrator. NECA states (p. 5) that this universal service administrative company ("USAC") would have "a balanced, representative

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Additionally, Ameritech actually contends (pp. 4-6) that non-ILECs and NUSF beneficiaries should be excluded altogether from NECA's "interim" governance and instead be relegated to a "special advisory committee" without authority over NUSF administration. There is no justification for such a position, especially since NECA itself long ago abandoned reliance on an advisory committee as a means of achieving neutrality.

board" based on Commission directives regarding its structure. NECA contemplates the USAC directors "would include some representation from the [current] NECA [b]oard" (id.), but appears to accept the critical principle that the new entity not be controlled by ILEC interests. Further, if the USAC is later selected as a permanent NUSF administrator, NECA has committed to entirely divest that entity.

The comments make clear that such a change, in tandem with other fundamental changes in NECA's structure and practices, is a necessary precondition to its eligibility for any future role (interim or otherwise) in NUSF administration. As Sprint states (p. 2), "[e]stablishment of the proposed USAC is the minimum restructuring which would be required in order for NECA to be appointed as the temporary administrator of the [USF]."[8]

8 However, NCTA correctly cautions (p. 7) that the proposed creation of the USAC subsidiary is merely "a legitimate basis to make [NECA] eligible to be the temporary administrator" of the NUSF (emphasis in original), and even if adopted should not prejudge NECA's designation for that role, either on an interim or permanent basis. See also Sprint p. 2 ("even if NECA is named as the interim fund administrator, there is no guarantee that it will be chosen as the permanent administrator"). NECA is by no means the only entity with the managerial resources and expertise to perform those fund administration functions, as MCI notes (p. 2). In all events, however, NECA or its proposed affiliate cannot serve in that capacity without first implementing fundamental structural and procedural

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The record in this proceeding also makes clear that successful implementation of NECA's January 10 proposal will require the Commission to prescribe certain additional principles for USAC's corporate governance. For example, other parties agree with AT&T that the ILECs and non-ILEC carriers should have equal representation on the board of any NUSF administrator. As MCI notes (p. 3), "a balanced [b]oard would be more nearly achieved by having an equal number of ILEC and non-ILEC carrier [d]irectors." In like manner, WorldCom states (p. 6) that a neutral NUSF administrator must "completely balance its Board of Directors . . . with non-ILEC interests."[9]

Commenters also recognize that, as AT&T showed (pp. 5-6), the board membership for each represented industry segment -- and, in particular, non-ILECs -- must be large enough to reflect its range of business and regulatory interests. As PCIA points out (p. 6), it is simply incorrect to assume "that all entities that fall within each of such categories [IXCs, CLECs and wireless

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changes to achieve neutrality between the interests of ILECs and non-ILECs.

9 See also ALA, p. 5 (advocating equal public, ILEC and non-ILEC representation); Sprint, p. 2 (board composition should "reflect the source . . . of subsidy fund contributions" by carriers).

carriers] have identical perspectives." NCTA also points out (p. 6) that, because its is unlikely non-ILEC directors will be "all of one mind on a particular issue," those directors "should be drawn from a cross-section" of entities (such as CLECs and Internet access providers) that provide supported services.[10]

Achieving this necessary objective will apparently require a board composed of at least the twenty-one directors contemplated by NECA's October 18 proposal.[11] None of the commenters suggests that this structure would be unmanageable for corporate governance purposes. Such a board structure could also include appropriate representation for the interests of NUSF beneficiaries (see Notice, ¶ 11),[12] as well as oversight

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10 In this regard, the ILEC directors would appear to have more uniform and consistent interests that lend themselves to block voting on matters affecting NUSF administration. The current allocation of NECA's directors among three subsets is primarily designed to achieve balance with respect to matters such as the management of non-USF pools and tariff administration. See AT&T Comments, n. 3. There is no similar divergence of interests among the ILECs with respect to NUSF issues.

11 By contrast, MCI's proposal (p. 3) for a board including five ILEC and five non-ILEC representatives does not provide sufficient breadth to encompass the diverse interests of non-incumbents.

12 For example, Sprint suggests (p. 2) that a board of twenty-one directors might include two representatives of "consumer" interests (e.g., schools and libraries), with one additional independent member representing federal or state

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by independent directors from outside the telephone industry, as with NECA's present board.[13]

CONCLUSION

For the reasons stated above and in AT&T's Comments, the Commission should reject as insufficient NECA's October 18, 1996 proposed changes in its board structure. Instead, the Commission should, at a minimum, require NECA to adopt the changes proposed in its January 10, 1997 letter as a condition of qualifying as

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regulators. Sprint suggests (id.) allocating the remaining board members between ILECs and non-ILECs in proportion to their NUSF contributions. AT&T believes that such an allocation, which could fluctuate annually, would destabilize NECA's corporate governance and should be rejected. Instead, the directors remaining after allocating representation to NUSF beneficiaries and independent outside directors should be equally divided between ILECs and non-ILECs.

13 However, as shown in AT&T's Comments (pp. 6-7), non-ILECs must be eligible to vote for such outside directors if those personnel are to be considered independent and unbiased for purposes of NUSF administration.

an interim or permanent NUSF administrator, and should additionally prescribe the board structure and election procedures described in these Reply Comments.

Respectfully submitted,

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February 3, 1997

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 3rd day of February, 1997, a copy of the foregoing "AT&T Reply Comments" was mailed by U.S. first class mail, postage prepaid, to the parties listed below.

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